IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 315 OF 2005

Bhausaheb Khanderao Nimse. ... Appellant.

Versus.

Smt.Laxmibai Manik Dive & ors. ... Respondents.

Shri G.S.Godbole i/by M/s.Utangale & Co. for the Appellant.

Shri K.S.Dewal for the Respondents Nos.1 to 3 & 5.

CORAM : ABHAY S. OKA, J.

DATED : 1st April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Appellant and the Respondents Nos.1 to 3 and 5.

2. Admit. The Respondents Nos.1 to 3 and 5 waive service. Taken up for hearing forthwith.

3. Shri Godbole appearing for the Appellant/original Plaintiff states that the Appellant/Plaintiff is not pressing for grant of any relief on the Application at Exh.5 as against the Respondent No.4 (original Defendant No.4) and liberty may be reserved to take out a fresh application for interim relief as against the Respondent No.4. In view of this statement, service of notice on the Respondent No.4 is dispensed with.

4. After detailed submissions are made by the learned Counsel appearing for the rival parties, Shri Dewal appearing for the Respondents Nos.1 to 3 and 5 on

instructions states that as the Roznama of the proceedings of the suit indicates that the written submissions filed by the Appellant were not taken on record and considered before passing the impugned Judgment and order, the impugned Judgment and order may be set aside only on that ground and the Application at Exh.5 be remanded to the trial Court with a direction to hear the same in a time bound programme.

5. Perusal of the Roznama shows that the application at Exh.5 remained pending for a long time for various reasons. The learned trial Judge granted time to the Appellant to file written submissions on number of occasions. Lastly time was granted till 28th January 2005. The Appellant tendered the written submissions on 29th January 2005. The learned Judge did not allow production of the written submissions and proceeded to pass the impugned Judgment and Order. When the Appellant had not made oral submissions, in my view, the learned Judge ought to have adopted a liberal approach and taken written submissions on record.

6. Perusal of the impugned Judgment and Order shows that the learned trial Judge has not given elaborate reasons and there is no consideration of all the documents on record. The impugned Judgment and Order is cryptic and is not at all satisfactory.

7. Considering the fact that the application at Exh.5 is pending from the year 1999, it deserves to be heard immediately.

8. Hence the following order is passed:

i) The impugned Judgment and order is quashed and set aside on the ground that the written submissions of the Appellant are not taken on record and considered by the learned trial Judge.

ii) The Appellant, the Respondents Nos.1 to 3 and 5 will appear before the learned trial Judge on 19th April 2005 at 11 a.m. Considering the entire controversy the learned trial Judge will not grant any adjournment to the Appellant on any ground. The learned trial Judge will give opportunity of being heard to the learned Advocate for the Appellant and will also consider the written submissions filed on record on 29th January 2005. The learned trial Judge will also give opportunity to the learned Advocate for the Respondents to give reply to the oral and written submissions made on behalf of the Appellant.

iii) The learned trial Judge will decide the Application at Exh.5 on or before 30th April 2005.

iv) The Application at Exhibit 5 is dismissed as against the Defendant No.4 as not pressed. However, the dismissal of the Application against the Defendant No.4 will not preclude the Appellant from taking out a fresh Application against the Defendant No.4 for appropriate interim relief.

v) All contentions on merit are kept open.

vi) Parties and the concerned Court to act on an authenticated copy of this order.

Judge.